

# **Memorandum of Understanding – Access to TVNZ Archive Collection**

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Ministry for Culture and Heritage

Department of Internal Affairs

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## **PARTIES**

Ministry for Culture and Heritage (*MCH*)

Department of Internal Affairs (*DIA*)

## **BACKGROUND**

- A The Minister for Land Information has entered into an agreement with TVNZ (the *Archive Facility Sale and Purchase Agreement*) in relation to the sale by TVNZ to the Crown of certain land, buildings, fixtures and fittings, and plant, situated in Avalon, Lower Hutt (*Archive Facility*).
- B DIA is responsible for the management and maintenance of the Archive Facility on behalf of the Crown.
- C MCH has entered into an agreement with TVNZ and The Film Archive (the *Archive Collection and Employees Agreement*) in relation to the transfer of certain employees and the sale by TVNZ to the Crown of the Archive Collection including certain equipment located at the Archive Facility.
- D The Archive Collection will be housed at the Archive Facility.
- E The majority of the material in the Archive Collection has high heritage and cultural value to New Zealand. The MCH and TVNZ wish to ensure the Archive Collection is appropriately preserved and that it is made increasingly available for re-use through online streaming where appropriate, and other means.
- F The purpose of this MOU (amongst other things) is for DIA (as owner of the Archive Facility) to provide on-going access rights to the Archive Facility to MCH (including via the Archive Manager) to allow it to access and use the Archive Collection, including all Equipment contemplated by the Archive Collection and Employees Agreement for so long as the Archive Collection remains at the Archive Facility. Such access will also allow MCH to enter into separate arrangements with the Archive Manager and TVNZ to access and use the Archive Collection.
- G The parties intend this MOU to be legally binding to the extent possible.

## **OPERATIVE PART**

### **1 COMMITMENT**

- 1.1 Each party confirms that it has reviewed this MOU and is committed to observing and performing its terms.



## 2 DEFINITIONS AND INTERPRETATION

### 2.1 In this MOU:

- (a) *Archive Collection* has the meaning given to that term in the Archive Collection and Employees Agreement and, importantly for this MOU, includes the Equipment;
- (b) *Archive Manager* has the meaning given to that term in the Archive Collection and Employees Agreement (and initially will be The Film Archive);
- (c) *Equipment* means the equipment referred to in the definition of "Equipment" in the Archive Collection and Employees Agreement and specified in Appendix One of that agreement;
- (d) *The Crown* means the Crown, acting by and through the Chief Executive of the Ministry for Culture and Heritage and the Chief Executive of the Department of Internal Affairs;
- (e) *The Film Archive* means the trust board known as "The New Zealand Film Archive" incorporated on 9 March 1981 under the provisions contained in the Charitable Trust Act 1957;
- (f) *Production Library Services Agreement* means any agreement entered into, or to be entered into, between TVNZ and the Archive Manager for the provision of the production library services;
- (g) *TVNZ* means Television New Zealand Limited; and
- (h) *Working Day* means a day on which registered banks are open for general banking business in Wellington, other than a Saturday or Sunday.

### 2.2 In this MOU, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice-versa;
- (b) headings are to be ignored;
- (c) references to a party include its successors and, and, where appropriate, any person under the party's control and directions;
- (d) references to enactments include amendments to those enactments and any substitute enactments;
- (e) references to clauses are references to clauses in this MOU;
- (f) references to the parties are references to the parties to this MOU;
- (g) neither party to this MOU is a partner, agent or representative of the other party;

- (h) this MOU does not create a trust, commercial partnership or joint venture; and
- (i) the invalidity of any part of this MOU will not affect the enforceability of any other part.

### 3 PURPOSES OF THIS MOU

#### 3.1 The purposes of this MOU are:

- (a) for DIA to:
  - (i) confirm access to the Archive Facility to MCH to allow it to use, maintain, preserve and manage the Archive Collection;
  - (ii) authorise MCH to enter into arrangements with the Archive Manager for it to access the Archive Facility thereby allowing the Archive Manager to use, maintain, preserve and manage the Archive Collection;
  - (iii) authorise MCH to enter into arrangements with TVNZ for it to access the Archive Facility thereby allowing TVNZ to use the Archive Collection for the purposes contemplated by the Archive Collection and Employees Agreement and the Production Library Services Agreement;
  - (iv) authorise MCH to allow public access to the Archive Facility to enable members of the public to use the Archive Collection; and
  - (v) provide access to and use of any of its fixtures and fittings at the Archive Facility which are reasonably necessary for MCH, the Archives Manager or TVNZ to use in connection with the Archive Collection;
- (b) to establish a working relationship between the parties;
- (c) to provide a framework for communication between the parties and for dispute resolution;
- (d) to assist the parties to fulfil their respective objectives for the housing, access and use of the Archive Collection as contemplated by the Archive Facility Sale and Purchase Agreement and the Archive Collection and Employees Agreement; and
- (e) to establish protocols for the on-going relationship between the parties in respect of the Archive Collection.



#### 4 TERM OF THIS MOU

- 4.1 This MOU commences on the date ownership of the Archives Facility is transferred from TVNZ to the Crown and continues until the Archives Collection is no longer held within the Archives Facility or the parties agree that this MOU is at an end.
- 4.2 Either party may, at any time, request that this MOU be reviewed by the parties. Any variations resulting from a review must be in writing and attached to this MOU or contained in a replacement MOU. The parties will consult with the Archive Manager and/or TVNZ about any proposed variations that might affect those entities.

#### 5 ACCESS

##### 5.1 DIA:

- (a) grants access to the Archive Facility to MCH to use, maintain, preserve and manage the Archive Collection;
- (b) confirms to MCH that it is authorised to:
- (i) enter into arrangements with the Archive Manager to grant rights of access to the Archive Facility to the Archive Manager in order for it to use, maintain, preserve and manage the Archive Collection;
  - (ii) enter into arrangements with TVNZ for MCH to grant rights of access to the Archive Facility to TVNZ in order for it to use the Archive Collection as contemplated by the Archive Collection and Employees Agreement and the Production Library Services Agreement; and
  - (iii) allow public access to the Archive Facility to enable members of the public to use the Archive Collection.

Such arrangements are to be consistent with the spirit and intent of this MOU and endure only while the Archive Collection is located within the Archive Facility.

- 5.2 In accessing the Archive Facility, MCH must (and must procure the Archive Manager and TVNZ to) avoid, minimise or mitigate any adverse effect on the Archive Facility.

#### 6 USE OF DIA FIXTURES AND FITTINGS

- 6.1 DIA confirms to MCH that it will allow MCH, the Archive Manager and TVNZ to use (where possible) any of DIA's fixtures and fittings at the Archive Facility which are reasonably necessary for any of those entities to use in connection with the reasonable use of the Archive Collection.
- 6.2 DIA's fixtures and fittings are those listed in Schedule 1 and as removed or replaced from time to time.

## **7 MAINTENANCE OF EQUIPMENT, ARCHIVE COLLECTION AND INSURANCE**

7.1 The parties acknowledge and confirm that:

- (a) DIA will maintain the Archives Facility in good order and condition, subject to clause 10.1;
- (b) DIA has no obligation to maintain and preserve the Archive Collection;
- (c) MCH and the Archive Manager are responsible for the maintenance, preservation and management of the Archive Collection (including the Equipment); and
- (d) MCH is responsible for arranging the insurance of the Archive Collection (including the Equipment).

## **8 ADDITIONS AND ALTERATIONS**

8.1 MCH will not make any additions or alterations to the Archive Facility without obtaining the prior written consent of DIA. DIA's consent must not be unreasonably withheld or delayed provided that MCH has provided all information, plans and documents in connection with the proposed additions and/or alterations. DIA may grant consent subject to such directions and/or conditions as DIA reasonably requires.

8.2 MCH will at its cost, if required by DIA, remove its additions or alterations to the Archive Facility, and make good any damage incurred by such removal, within 20 working days following the end of this MOU. If not removed by such date, ownership of such additions or alterations will pass to DIA, and DIA shall be entitled to remove and dispose of such additions and alterations as it decides, and pass the cost of such removal (and any associated make good to the Archive Facility) to MCH.

## **9 OUTGOINGS**

9.1 DIA will pay the following outgoings in respect of the Archive Facility:

- (a) charges for building services such as air conditioning (and including any service contract charges);
- (b) the costs incurred by DIA in supplying to the relevant territorial authority a building warrant of fitness for the Archive Facility and obtaining associated reports as required by sections 108 and 110 of the Building Act 2004;
- (c) New Zealand Fire Service charges, including maintenance charges in respect of all fire detection and fire fighting equipment (to the extent these do not already form part of the costs that MCH is directly responsible for under clause 12.2);



- (d) security service charges;
- (e) cleaning charges in respect of the exterior of the Archive Facility, including the exterior side of external windows; and
- (f) grounds maintenance charges.

9.2 MCH will pay the following outgoings in respect of the Archive Facility:

- (a) charges for water, gas, electricity, telecommunications and other utilities and/or services serving the Archive Facility;
- (b) rubbish collection and recycling charges;
- (c) charges for access cards and any replacements;
- (d) cleaning charges in respect of the interior of the Archive Facility, including internal windows and the internal side of external windows; and
- (e) provisioning of toilets and any other shared facilities.

9.3 Where DIA has paid for, or incurred costs in respect of, any of the outgoings which are the responsibility of MCH under clause 9.2 above, MCH will reimburse DIA for such costs by the 20<sup>th</sup> of the month following the month in which MCH receives a valid tax invoice from DIA.

9.4 MCH will notify DIA as soon as reasonably possible of any maintenance or repairs required to the Archive Facility.

9.5 DIA will provide MCH with contact details for MCH or the Archive Manager to notify DIA of maintenance and facility management issues.

## 10 **LIABILITY FOR DAMAGE TO ARCHIVE FACILITY**

10.1 Upon receipt of proper invoices, MCH will promptly reimburse DIA for any costs incurred by DIA to fix any damage caused to the Archive Facility caused by personnel of MCH, the Archive Manager or TVNZ from time to time.

## 11 **CONSULTATION**

11.1 Without limiting any other provision of this MOU, the parties will consult with each other regarding any long term plans either of the parties may have in relation to the Archive Facility or the Archive Collection.

11.2 The parties agree to:

- (a) discuss matters affecting this MOU, the Archive Facility or the Archive Collection;
- (b) consult with each other on any proposed amendments to the Archive Collection and Employees Agreement, and in relation to

reviews of TVNZ's access rights under clause 13.5 of that agreement; and

- (c) notify each other immediately of any actual or anticipated issues related to this MOU, the Archive Facility or the Archive Collection that could significantly impact MCH's (and the Archive Manager and TVNZ's) ability to access and use the Archive Collection as MCH and those other entities require.

11.3 The following principles should guide any consultation under this MOU:

- (a) the party initiating the consultation (*Initiating Party*) will provide the other party (*Receiving Party*) with all relevant information to enable the Receiving Party to fully consider the subject matter of the consultation;
- (b) the Receiving Party will progress consultation expeditiously so that the Initiating Party is not materially affected by delay caused by consultation;
- (c) each party shall be provided with a reasonable opportunity to present their views to the other;
- (d) the views presented shall be received with an open mind and be given due consideration by the other party; and
- (e) the parties shall use reasonable endeavours to address or ameliorate any effects on the Receiving Party arising from the subject matter of the consultation.

## 12 COMPLIANCE WITH LEGISLATION

12.1 MCH will (and will procure The Archive Manager and TVNZ to), in relation to the Archive Facility, comply with all obligations imposed on MCH at law as the person who controls a place of work or the person conducting the business or undertaking from the Archive Facility and MCH will be responsible for the health and safety of any person who enters the Archive Facility at the request of MCH.

12.2 MCH will be responsible for (and bear the associated costs and risk in connection with) compliance with the relevant provisions of the Building Act 2004 concerning fire evacuation procedures for the Archive Facility.

12.3 DIA will otherwise comply with all obligations imposed on DIA at law as owner of the Archive Facility.

## 13 RISK

13.1 MCH acknowledges and agrees that it occupies the Archive Facility at its own risk in all things, subject to DIA's compliance with clause 12.3.



**14 COMMUNICATION**

- 14.1 The parties acknowledge the importance of keeping each other informed and in particular, of informing each other before making any statements to the public or the media that make affect the other party.
- 14.2 The parties wish to achieve consistency in the housing and use of the Archive Collection and ensure that the other party is aware of all issues which may impact on or affect the Archive Collection or Archive Facility.
- 14.3 Each party will keep the other informed of any issues which may affect the Archive Collection or Archive Facility.
- 14.4 The persons representing the parties are:

**MCH**

Administration and Facilities Co-ordinator  
Ministry for Culture and Heritage  
P O Box 5364  
Wellington

DDI: [REDACTED]

Mobile: [REDACTED]

Email: [REDACTED]

**DIA**

General Manager Operations  
Department of Internal Affairs  
PO Box 805  
Wellington

DDI: 04 495 6803

Email: Philip.green@dia.govt.nz

- 14.5 Any change of personnel will be notified promptly to the other party.

**15 RESOLUTION OF DISPUTES**

- 15.1 If a dispute arises between the parties under this MOU, then the following provisions will apply:
- (a) the parties will encourage resolution of any disputes arising between them by way of active consultation with a view to resolving concerns promptly;
  - (b) each party commits to consider, investigate and endeavour to resolve any disputes as they arise in a manner that maintains integrity, professionalism and takes into account the statutory accountabilities of each party and recognises each party's objectives;

- (c) if the parties are unable to resolve a dispute then either party may give written notice to the other of the dispute and require both parties' representatives to meet to attempt to settle the dispute, and the other party must, upon receipt of the First Party's notice, promptly ensure that its representative attends the meeting and attempts to resolve the dispute;
- (d) if the parties' representatives are unable to swiftly resolve the dispute between them, then the parties must escalate the dispute to their respective chief executives;
- (e) if the parties' chief executives are unable to resolve the dispute, the parties must consider escalating the dispute to their responsible Ministers.

**Dated:**

**EXECUTION**

**Signed** for and on behalf of **Ministry for Culture and Heritage** by:

*[Handwritten Signature]*

LEWIS HOLSEN

Full name (please print)

Chief Executive

Position (please print)

**Signed** for and on behalf of **Department of Internal Affairs** by:

*[Handwritten Signature]*

Marg Hindley

Full name (please print)

DCE Shared Services

Position (please print)

31/7/2014

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## SCHEDULE 1 – DIA'S FIXTURES AND FITTINGS

Asset no.	Class	Asset description	Asset description	Cap.date	AssetSup.No.	DepKy
<b>Plant</b>						
9000037	MACH	HYDROVANE 5 AIR COMPRESS	AIR COMPR	01/12/1988	COMPRESSORS	2010
9000260	MACH	Air Conditioning	ARCHIVES BUILDING	01/03/2002	AIR-CON	2010
9000510	MACH	AIR CONDITIONING	AIR CONDITIONING	01/07/2002	AIR-CON	2010
9000511	MACH	AIR CONDITIONING	MACHINERY	01/09/2002	AIR-CON	2010
9000552	MACH	INDUSTRIAL DEHUMIDIFIER	AIR CONDITIONING	01/09/1995	AIR-CON	2010
9000553	MACH	INDSTR. BD 10-DEHUMIDIFIER	AIR CONDITIONING	01/11/1995	AIR-CON	2010
<b>Fixtures and Fittings</b>						
7007488	FURN	LUNDIA MOBILE SHELVING	FURNITURE	01/06/1992	SHELVES	2010
7007489	FURN	LUNDIA MOBILE SHELVING	FURNITURE	01/06/1992	SHELVES	2010
7007490	FURN	LUNDIA MOBILE SHELVING	FURNITURE	01/06/1992	SHELVES	2010
7007491	FURN	LUNDIA MOBILE SHELF UNIT	FURNITURE	01/06/1992	SHELVES	2010
7007492	FURN	LUNDIA MOBILE SHELF UNIT	FURNITURE	01/06/1992	SHELVES	2010
7007493	FURN	LUNDIA MOBILE SHELF UNIT	FURNITURE	01/06/1992	SHELVES	2010
7007494	FURN	LUNDIA MOBILE SHELF UNIT	FURNITURE	01/06/1992	SHELVES	2010
7007495	FURN	LUNDIA MOBILE SHELF UNIT	FURNITURE	01/06/1992	SHELVES	2010
7007496	FURN	LUNDIA MOBILE SHELF UNIT	FURNITURE	01/06/1992	SHELVES	2010
7007497	FURN	LUNDIA MOBILE SHELVING	FURNITURE	01/06/1994	SHELVES	2010
7007498	FURN	LUNDIA MOBILE SHELVING	FURNITURE	01/06/1994	SHELVES	2010
7007499	FURN	LUNDIA MOBILE SHELVING	FURNITURE	01/06/1994	SHELVES	2010
7007500	FURN	LUNDIA MOBILE SHELVING	FURNITURE	01/06/1994	SHELVES	2010
7007501	FURN	LUNDIA MOBILE SHELVING	FURNITURE	01/06/1994	SHELVES	2010
7007502	FURN	LUNDIA MOBILE SHELVING	FURNITURE	01/06/1994	SHELVES	2010
7007503	FURN	LUNDIA MOBILE SHELVING UNITS	FURNITURE	01/11/1994	SHELVES	2010
7007504	FURN	LUNDIA SHELVING	FURNITURE	31/08/1996	SHELVES	2010
7007505	FURN	LUNDIA MOBILE SHELVING UNIT	FURNITURE	01/09/1997	SHELVES	2010
7007506	FURN	LUNDIA MOBILE SHELVING UNIT	FURNITURE	01/09/1997	SHELVES	2010
7007507	FURN	LUNDIA SHELVING	FURNITURE	01/01/1998	SHELVES	2010
7007508	FURN	LUNDIA SHELVING	FURNITURE	01/08/1998	SHELVES	2010
7007509	FURN	LUNDIA SHELVING	FURNITURE	01/08/1998	SHELVES	2010
7007527	FURN	LUNDIA SHELVING	FURNITURE	01/06/1999	SHELVES	2010
7007541	FURN	LUNDIA MOBILE SHELVING	FURNITURE	01/06/1999	SHELVES	2010
7010346	FURN	LUNDIA SHELVING	FURNITURE	01/06/1999	SHELVES	2010
7010694	FURN	LUNDIA MOBILE & TRACKS	FURNITURE	01/10/1999	SHELVES	2010
7010695	FURN	LUNDIA MOBILE & TRACKS	FURNITURE	01/10/1999	SHELVES	2010
7010696	FURN	LUNDIA MOBILE SYSTEM	FURNITURE	01/10/1999	SHELVES	2010
7010697	FURN	ADDITIONAL SHELVES X36	FURNITURE	01/10/1999	SHELVES	2010
7011375	FURN	HUESTOR ADJUST STEEL SHELVING S	HUES TOR VIDEOTAPE STORAGE	01/03/2002	SHELVES	2010
7011377	FURN	HUESTOR ADJUST STEEL SHELVING S	HUES TOR NEGATIVE STORAGE	01/03/2002	SHELVES	2010
7011390	FURN	HUESTOR VIDEOTAPE STORAGE SH	STORAGE SHELVING	01/03/2002	SHELVES	2010
7011391	FURN	HOLLANDS OFFICE CABINETS	HOLLANDS Office Cabinets	01/03/2002	SHELVES	2010
7011391	FURN	Carpeting	ARCHIVES BUILDING	01/03/2002	CARPETS	2010
7011392	FURN	Vinyl Flooring	ARCHIVES BUILDING	01/03/2002	FLOOR TILES	2010
7011393	FURN	Mat Flooring/etc	ARCHIVES BUILDING	01/03/2002	CARPETS	2010
7011394	FURN	Blinds	ARCHIVES BUILDING	01/03/2002	FIX&FITTINGS	2010
7012684	FURN	Mat Flooring/etc	ARCHIVES BUILDING	01/07/2002	CARPETS	2010
7012685	FURN	Blinds	ARCHIVES BUILDING	01/07/2002	FIX&FITTINGS	2010
7012686	FURN	Carpeting	ARCHIVES BUILDING	01/07/2002	CARPETS	2010
7012687	FURN	Vinyl Flooring	ARCHIVES BUILDING	01/07/2002	FLOOR TILES	2010
7012688	FURN	Hydestore Shelving	SHELVING	01/07/2002	SHELVES	2010
7012689	FURN	Lundia Shelving	SHELVING	01/07/2002	SHELVES	2010
7012692	FURN	Curtains	FURNITURE	01/09/2002	FIX&FITTINGS	2010
7012693	FURN	Mirrors	Furniture	01/09/2002	GENERAL	2010

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